EXHIBIT 10

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

	Chapter 11
MOTORS LIQUIDATION COMPANY, et al, f/k/a General Motors Corp., et al.,	Case No.: 09-50026(REG) (Jointly Administered)

Debtors.

- x

STEVEN GROMAN, ROBIN DELUCO, ELIZABETH Y. GRUMET, ABC FLOORING, INC., MARCUS SULLIVAN, KATELYN SAXSON, AMY C. CLINTON, AND ALLISON C. CLINTON, on behalf of themselves, and all other similarly situated,	Adv. Pro. No.: 14-01929(REG)

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

- x

U.S. Bankruptcy Court

One Boling Green

New York, New York

May 2, 2014

9:46 AM

B E F O R E :

HON ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Hearing re: Status Conference

Transcribed by: Dawn South and Sheila Orms

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P R O C E E D I N G S

THE COURT: Good morning, have seats, please. I know most of you at the counsel table. Mr. Steinberg, with you is whom?

MR. STEINBERG: With me is -- well, you can introduce yourself.

MR. GODREY: Richard Godfrey, Your Honor.

MR. STEINBERG: From Kirkland.

THE COURT: Mr. Godfrey? Okay. Thank you.

MR. GODREY: Good morning, Your Honor.

THE COURT: I know Mr. Weisfelner, Mr. Inselbuch, Mr. Esserman, and Mr. Flaxer. As others want to be heard I'll give them that opportunity as we go along.

Within limits I'm going allow parties to be heard as they see fit, but I have some preliminary comments.

I haven't read all 3,500 pages of the filings that have come in in the last ten days, but I've read New GM's motion, Mr. Flaxer's complaint, Mr. Weisfelner's objection, and have also read all of counsel's letters and the various proposed agenda items.

I think I have a pretty decent handle on the issues that are going to need to be addressed today and the issues that are going to need to be addressed in the upcoming several months, but I'm less clear as to the extent to which all of the issues are already on the table.

Identifying the issues that are going to need to be teed up for judicial determination, or more exactly figuring out how and when they're going to be put on the table, is one of the primary purposes of the conference today.

I think everybody understands or should that today is not the day to argue the merits of any of your respective positions or especially calling either side names. It's instead to, as I said, identify the issues that need to be addressed and to establish a fair means for getting the issues judicially determined.

I appreciate the efforts of Mr. Steinberg and Mr. Weisfelner and Mr. Inselbuch, Esserman, and Flaxer in conferring before we got here to avoid inefficiencies and to set up the orderly process for teeing these issues up. You got pretty far and I'll take care of the rest.

As you'll hear momentarily I have a number of tentatives, as that expression is used in California and elsewhere in the Ninth Circuit, which are my inclinations as to how to proceed, subject to your rights to be heard, but I have some expectations as to an orderly discussion, no histrionics, no repetition. I also have some questions and concerns that I want you to address when it's your turn.

Starting with my questions.

I gather there are now about 60 class actions and

a couple of individual actions pending against New GM in various parts of the country with respect to the ignition switches in some way, but I have only a partial understanding of what the claims typically characterized as for economic loss are.

I'd understood, rightly or wrongly, that New GM voluntarily assumed liability for wrongful death, personal injury, and property damage with respect to any "incidents or occurrences," which I understood to be things like wrecks or fires or of course death or injury, that took place after the sale in July of 2009.

I also understood that New GM had undertaken responsibility for satisfying the glove box warranty and for complying with state lemon laws.

But I need to get a handle on what's left. What is left that has engendered 60 class actions across the country? And obviously I'll hear your respective views on that. I got a pretty good sense of the legal theories that were invoked, vis-à-vis that economic loss, but I still don't understand exactly what we're talking about.

Mr. Inselbuch's April 24th letter identifies an issue as to whether claims against New GM, statutory or otherwise, based on post-sale conduct of New GM are subject to my orders. Mr. Esserman's April 23rd letter and Mr. Weinberg's -- I don't see Mr. Weinberg, is he here

somewhere? Oh, yeah there is he, okay. April 30 letters raise whey I understand to be the same issue.

To what extent, and I guess this is mainly for you, Mr. Steinberg, is there a dispute on that? Or is the devil in the details turning on the whether the alleged wrongful conduct is wholly past sale or there's some other nuance that would make the question harder than it would appear at first blush? Help me get a better handle on what we're talking about in that regard.

A similar issue exists with respect to the lemon laws as mentioned in Mr. Esserman's April 23rd letter. Please address that as well.

Next, each of the Steinberg and Weisfelner letters talk about getting a sense as to how the majority of the class action plaintiffs are prepared to proceed. I underscore the word majority. When each of you use that term it suggested to me, rightly or wrongly, that the plaintiffs referred to were less than all of them. I think what you were able to accomplish was very, very helpful, but have some difficulty in seeing how that by itself would get me across the goal line.

The fact that all plaintiffs couldn't get behind three law firms -- and on this limited issue I think I can take judicial notice -- have some proven track record in addressing the interface between tort liability and

bankruptcy law causes me some concern. Because as I said, I don't want repetition, and that includes making the same point in different ways. I need to hear from anybody who thinks those three firms aren't good enough why that's so, or conversely why they're not raising issues that need to be addressed. That's not to say that anybody who thinks up anything those firms couldn't can't be heard, but I need to know why and what's the problem.

I also want to hear from Mr. Flaxer, since he was the first and he was the only one that brought an adversary, and I don't put him in the category that I put all the others.

Next, Mr. Esserman speaks in his April 23rd letter, paragraph 5, of teeing up procedures for plaintiffs. I don't know if this is the class action plaintiffs he represents or all prospective plaintiffs, to show cause whether they have any claims against New GM not otherwise barred by the sale order and injunction.

You wrote that letter, Mr. Esserman, back on April 23rd and I gather you've had discussions with other folks since that time. I'd like you or Mr. Weisfelner, let me know whether you have any needs and concerns to get rulings on this that haven't been subsequently rolled into what needs to be addressed, and I'd like to ask the same with respect to the item you listed as number 7 in your

letter, procedures under which, assuming the sale order stands without modification, under which plaintiffs might seek amendments to it.

Okay, now for my tentatives. I apologize to you all for speaking at such length.

As I said these are California tentatives, which are views I formed on a preliminary basis after reading the briefs and the letters but which are subject to your rights to be heard and which I'll obviously consider in the way of modifications based on whatever you tell me verbally.

First. Now that fraud on the Court has been taken off the list of threshold issues I'm not sure if there's a material difference in views or for that matter any difference in views on the threshold issues that need to be addressed at least insofar as the majority of the plaintiffs are concerned.

I'm inclined to consider as threshold issues the two remaining issues that were shown on Mr. Weisfelner's black line, and I'm also amenable and inclined to allow any other purely legal issues to be raised along with the so-called threshold issues, such as the discrimination argument, that is the argument that creditors with personal injury claims, death claims, property claims would be addressed by New GM whereas those with the so-called economic damage claims would not.

It seems to me, again subject to your rights to be heard, that the more appropriate means of demarcation between claims that can and should be considered as threshold issues and those that can be put and should put to a later time is to separate issues that can be addressed without discovery from those that can only be addressed with discovery and potentially a very burdensome or at least lengthy discovery process.

The principal players as I read the letters, New GM and the class action plaintiff steering committee seem to feel that they can win without discovery, and whether or not either side is right in that regard that seems to me, that is to deal with issues without discovery, to be the logical place to start since even if issues need to be further addressed or refined the early work that's accomplished would set the table for the work, if any, that needs to be considered next.

The corollary of that would seem to be that I need to reject the contentions of a couple of you, and I'm thinking of Mr. Esserman, your first -- your April 23rd letter and Mr. Etkin's April 30 letter, that we should now have discovery, and as I read your early letter, Mr. Esserman, what would seem to be pretty massive discovery early on and that such discovery should proceed on an expedited basis.

Once again I note that you, Mr. Esserman, are a member of the steering committee and your views may have evolved since April 23rd when you wrote that early letter.

Two. My tentative is not to interfere with the MDL's hearing now scheduled for May 29th, I think that's the date, and to permit the judicial panel and multidistrict litigation to rule on where pretrial proceedings with respect to any future litigation should proceed, but that would be under the understanding, at least under my understanding -- that's why I wanted you guys to be heard on it -- that everyone understands that to the extent I hereafter rule in a way that some or more than some of those now pending litigations before the MDL panel need to be put on hold or stopped in some other fashion, that I would be free to do that, including vis-à-vis, the multidistrict panel irrespective of what the MDL panel had accomplished up to that point in time.

Three. I share your view that anyone who's unwilling to agree to a temporary standstill that the majority seems to agree upon should come forward within a time certain either on the date that's already proposed, which I think was May 10, or some alternate date. More likely close to that, but if fairness requires a little more time that to my thinking would be okay.

Reading the submissions so far it's obvious that

these are serious issues, and my general view -- call it a tentative or not -- is that rushing by a few days or even a few weeks on issues of this importance isn't in anybody's interest.

Fourth. I think we need to ascertain by a date to be agreed upon or set all of the issues that are on the table or that are to be decided even if they're not addressed as what I call Phrase I issues. I need your recommendation as to the best way to do that, and what deadline I should impose for parties to get their contentions on the table.

That wouldn't necessarily mean that they should all be briefed at that early time, and in fact my expectation would be that they wouldn't be, but I want to get the lay of the land on the issues that I'm going to be asked to rule upon.

Related to that was Mr. Flaxer's suggestion that a date should be set by which any and all interested parties should commence adversaries similar to the one he brought if they were of a mind to. My tentative is to agree with Mr. Flaxer's point in that regard.

Fifth. I want to accomplish as much as we can before we get bogged down in discovery. I like the idea of you guys agreeing on a stipulated record, but I don't like the variant of that, which I think was proposed by

Mr. Weisfelner, which was request for admissions. If things would be admitted they'd be stipulated to, and if they're not admitted they're going to result in disputed issues of fact as to which we're going to have to come up with some other mechanism, and Rule 35 requests for admissions is really nothing more than a cost shifting device any way.

So I want you guys when the time comes to really try to agree on everything you can agree upon consistent with your professional responsibilities and then identify issues as to which you agree to disagree and I'll decide then what to do about it.

Six. We have one adversary proceeding on file and one contested matter. Other adversaries may be filed consistent with the point Mr. Flaxer made, but at this point I have these two, we need to think about the possibility of more.

My tentative to consolidate the contested matter and any adversaries for procedural purposes. Mr. Steinberg, your letter cited decisions by Judge Lifland and Judge Walrath indicating pretty clearly holding that when you're enforcing an earlier court order you don't need to bring an adversary to do that, but many observers might agree with the judgment that Mr. Flaxer presumably made that when he wanted a declaratory judgment and he wanted some of the stuff that he asked for in there an adversary proceeding was

appropriate.

I guess the issue is whether others who are looking for things similar to what Mr. Flaxer did would need to either climb onto his adversary or bring their own adversaries. It might be appropriate for separate adversaries to be brought, although my thought would be that they would be procedurally consolidated and jointly administered as well, but I need people to focus on that.

If those adversaries are to be brought -- and many might regard that as a good idea, but I'm not forming a tentative on that -- Mr. Flaxer's point that it should happen by a fairly early date certain seems to me to be pretty persuasive. But again, that's a tentative.

Seven. While these issues mainly involve New GM some also appear to also involve Old GM or the GUC Trust, the general unsecured creditors trust, that's Old GM's successor.

It would seem to me that there's an issue as to whether there might be excusable neglect to file late claims against Old GM to the extent that I ruled that any of the claims being asserting are prepetition claims rather than post-petition claims if the ability to assert those claims wasn't known by the time that the Old GM case bar date expired.

When I was preparing for today I speculated that

issues of that character were why Mr. Golden wanted to have the opportunity to be heard.

To the extent any issues involving Old GM or the GUC Trust can be heard as matters of law my tentative is that they should be considered along with the other threshold issues and that anybody who cares about those kinds of issues should have a chance to weigh in on them.

Lastly, eight. In his April 24th letter Mr. Flaxer raised the issue of mediation. Obviously the idea or the prospect of meeting the two sides needs and concerns without this monstrous battle is attractive to me.

When I was a practicing lawyer a district judge in Delaware, Joe Farnan, some of you may know him, made an impression on me and I think a bunch of other lawyers when he said that the guy in the robe would do his job but parties' needs and concerns could be better addressed by negotiation than by forcing a judge to decide issues within the four corners of what judges are allowed to decide.

And frankly it would be great if whatever money is available for injured people could go to them and not to litigation costs and attorneys' fees. I have no tentative on this, but I want people to address it by the time they're done.

So we're ready to continue. Mr. Steinberg, I'm going hear from you first, then Mr. Weisfelner, then from

anybody who has any non-repetitive remarks to make after that. Oh, Mr. Flaxer, can I hear from you, please, after I hear from Mr. Weisfelner if you care to be heard.

Mr. Steinberg.

MR. STEINBERG: Thank you very much, Your Honor, and thank you for the careful consideration of the issues that have been presented.

I'd like to be able to address the tentatives and then go back to the questions and then maybe find the script that I had started in connection with this hearing.

Your Honor had identified the demarcation for threshold issues as that which could be done with either no discovery or very little discovery versus something that would lead to much more complex discovery, and we agree that that is a proper formulation.

The one thing that we would ask Your Honor to consider, and I understand the balance here, is that we had suggested as well as I think Mr. Flaxer, that fraud on the Court would be a threshold issue.

Generally we were lumping all the Rule 60 issues together, and many times when someone argues 60(d)(1), which is whether there's an equitable remedy that should be fashioned, or even the 610(b)(4), which is the procedural due process, they usually throw in 60(d)(3), which is the fraud on the court, whether it's proper or not, but that's

-- but they assert those in. And so I understand that fraud on the Court may require some additional discovery, but the issue is how much additional discovery and should it be considered as well as a threshold issue?

THE COURT: You read my mind, Mr. Steinberg, because when I thought about fraud on the Court in trying to put myself in the role of a plaintiff's lawyer then I would have thought that the plaintiff's lawyer would want to get into GM's files or communications to ascertain the extent to which behind the scenes Old GM was thinking about this liability and not making a disclosure to me. You think that's only modest discovery or can be limited in that fashion or were you thinking about a different kind of discovery that might be undertaken, vis-à-vis, that issue?

MR. STEINBERG: Well the issue about whether the Old GM professionals or the people in charge of negotiating the MSPA or the people in charge of presenting evidence to Your Honor, that would be a fairly discreet time period. I mean the bankruptcy was filed on June 1, the order approving the sale was July 5. So we don't think that necessarily the discovery from a time span is as significant. We're also fairly confident what the result would be of that -- of any of that type of discovery.

But, Your Honor, as you outline the issue if the choice that we had was to effectively piecemeal the 60(d)(3)

issue and the trade off would be a much more streamline procedure to present the legal issues -- so either there'd be no discovery or very, very little discovery -- that may be something that we're prepared to do, because we understand the logic of that. And though it's piecemealing a Rule 60 issue it may make sense under the circumstances to be able to present as many of the pure legal issues as possible.

I probably would need, and I'm sure this side of the table probably needs the opportunity to talk to their other people as well too to see whether they agree with my formulation, but I certainly understand the logic of it and if there was an agreement that there would be little or no discovery and we would just try to stipulate as much as we could to a stipulated record that may be a good avenue to go forward.

Your Honor, in trying to address one of your other tentatives, because I think it ties into a number of different issues, you'll see that -- that in our agenda letter we had said that the people who brought the adversary proceeding could file an amendment to the complaint by May 14th, provided that it doesn't object to the substance of what we agree to as the procedure going forward today. So if they want to restate what they think their claims are and perhaps try to make sure that it was more inclusive of

other people then that's fine.

And you see that in Mr. Weisfelner's letter that he talked about filing an amended complaint in the -- in the MDL action as a procedural issue, which we don't think is a procedural issue, we actually think it's a substantive issue. But both things -- both of those issues evolve around one of the tentative --

THE COURT: Forgive me, Mr. Steinberg, I lost you there. I thought you said filing an amended complaint in the MDL action. I thought that my only connection with the MDL action is I guess I have the power to put it on hold, but what else do I have to do with the MDL action?

MR. STEINBERG: No, Your Honor, I was trying to lead to a point, but I was merely saying that there was a point of disagreement in the letters as to whether the agreement to allow them to go forward on the May 29th hearing and that it wouldn't be stayed and that it would be for purely administrative matters, and we were disagreeing as to whether the filing of an amended complaint in the MDL action would be an administrative matter or a substantive matter.

But the point that I was trying to connect between these things is that -- is that the filing of an amended complaint by Mr. Flaxer or a recitation to file a consolidated complaint to try to get all those theories

together is really trying to address Your Honor's tentative ruling about wanting to know what are the bankruptcy-related issues, what is -- what is it that they think that they can go forward on that -- that would not otherwise be foreclosed by the sale order?

All of those things are touching the same thing, and my suggestion in light of your -- the tentatives and in thinking about it and the reviewing the letters is that the issue of whether they should file a complaint in the MDL action or not should be -- should in effect be deferred until the next status conference, and that one of the things that we should be doing between this status conference and the next status conference is to try to decide what we had called in our agenda letter the bankruptcy-related issues that are not the threshold issues, to try to define what it is that we ultimately are going ask Your Honor to set forth, because that's the exercise that's imbedded in doing either the amended complaint to the adversary proceeding or the amended complaint to try to coalesce all of these complaints. Those are the issues that someone will have to decide are bankruptcy-related issues or survive and should go forward without, and that's the exercise that I think should be done, and I don't think we should reach a firm decision as to whether they should be doing anything more than -- on the MDL proceeding to go forward on May 29th, do

the things like selection of lead counsel, the things that we can agree are purely administrative, and we should defer consideration of the amended complaint issue until the next status conference.

THE COURT: But matters of the character that the MDL could appropriately determine in your view could include whether the pretrial proceedings take place in say California on the one hand or New York on the other?

MR. STEINBERG: For the MDL I think the MDL should be able to select which forum is going to go forward on generally the MDL action to the extent that the MDL action will ever go forward.

THE COURT: Okay. Continue, please.

MR. STEINBERG: The -- Your Honor, with regard to the -- your tentative ruling on the stipulated record and that we don't do admissions, that is essentially what we have been trying to urge on the plaintiffs.

One of the issues was that we had discussions separately with one group versus another group and they had differing views on certain issues. And even with the group that had a larger issue what we were getting to some extent was the lowest common denominator. When you have 15 people having suggestions sometimes you get 15 suggestions because no one really wants to whittle it down and they leave it up to us to do it.

We urge to do a stipulated record under the theory that it's too early to do admissions, it is a -- really just a cost shifting issue as Your Honor had identified, and it leads to a dialogue. If they -- if they propose that they want us to agree to something instead of me answering as I would answer an admission I'd be sitting there saying I can't do that but I can do something different and then we would have an iterative dialogue to be able to try to present what the issues are and then I wouldn't have to try to do the reflexive issue, which is that if you want admissions then maybe I have admissions that I want to ask of you. Did you know of the bankruptcy proceeding? Did you know of a problem with your car? Those things and try to identify those issues, which may be relevant to certain of the issues whether it's -- that they may tangentially relate to the fraud on the Court issue, which may be off the table now, but -- so I said stay with the stipulation and if we can't agree to it we'll have a status conference in June and we'll tell the judge this is as far as we could get and we couldn't get all the way there, and if we couldn't agree on everything then you could propose what kind of limited discovery you think you need to conclude those facts that are necessary to determine the purely legal issue. We'll be able to evaluate it. And then if we can't agree with that we'd be before Your Honor on something specific and

concrete.

And the problem that we were having between now and May 2nd is that there was a lot of general propositions that were asserted and many times the devil is in the detail, and you need to know when someone says it's purely administrative it's not substantive you really need to know what they are talking about. When people say we can agree to some facts and it's not going to be big, it's going to be narrowly tailored you need to know what someone means when they say narrowly tailored, because when actually try to pin it down it becomes a lot more difficult.

So what we were proposing -- and I think there was a lot of receptivity on it from the other side -- was a walk and then run, which is give us a chance to try to do an exchange and we'll see how good we are, and give us a chance if we can't fill in all the gaps to how to complete the discovery and we'll see how good we are, and if we can't do it then I know that you're going to bridge the gap for us and then we'll both live with whatever Your Honor rules. And we're only looking to defer that consideration where we otherwise couldn't agree for like a six or seven-week period.

And the reason why we think that time period going a little longer versus shorter is better -- and I think Your Honor eluded to that as one of your tentative rulings that

sometimes things take a little longer and these serious issues -- is that until we know how they've organized -- and it's really their job to organize, but it's our burden to make sure that we're dealing with 2 groups of people, 4 groups of people, or 20 groups of people, because it becomes harder to figure out briefing schedules, potential discovery, stipulation of facts if we don't know who the people are that we're dealing with you may need to have a little more time until they get better organized to be able to do that. That's why we actually suggest in our agenda letter is just tell us if you formed a group. That has the salutary effect of at least we know who we're dealing with and Your Honor will know whether they actually formed the group, and those who decide they want to be outliers well then they will have to stand up and tell Your Honor why they need to be an outlier and the liaison groups couldn't properly be formed.

But that's all we were trying to say on that issue, which is give them an opportunity to get themselves organized and let us know how successful you were, and where you were not fully successful just let us know because we -- we on our side of the table procedurally have to deal if they're not fully organized and then ultimately Your Honor will have that same issue about how things are being presented to Your Honor.

With regard to -- so that's why we thought we needed a little more time. And by the way, the dates that we selected in our letter were given to us by one of the plaintiff groups, and the other plaintiff group actually said, while they shortened our dates, they also said in their letter that they're flexible about the dates. So I don't think ultimately at the end of the day we're going to disagree about dates, about when we're going to be here.

I think the general proposition is that between now and some time in mid to late June when we'll have another status conference we're going to try to accomplish a stipulated record for briefing the threshold issues and to see whether there's any discovery that is it warranted or not with regard to that stipulated record.

And I would suggest also, and this is off my agenda letter, but picking off on the tentative ruling, trying to identify during that period of time the other issues which are not threshold issues, the other bankruptcy-related issues that we'd ask Your Honor to consider, and we'd be doing all of that presentation at the next status conference. And at that next status conference, to the extent that the defendants are not fully organized, that we would try to -- and it wouldn't be me, but it would be Your Honor and the plaintiffs -- try to figure out how they can, you know, get to the end to themselves more fully organized.

The tentative that you had about the GUC Trust, late-filed claims, excusable neglect, we actually think that this is an issue that should be dealt with. It is not our issue, but to the extent that they've raised or some of them have raised a procedural due process issue relating to the bar order, which was after the sale order had taken place and they're saying that they don't have a remedy -- an effective remedy against Old GM, well there is a GUC Trust, there are a number of -- there's a number of values still left in the GUC Trust. Whether they actually are a creditor, where they actually have excusable neglect I'm not trying to prejudge it, but we were urging that they shouldn't just assume that there was nothing there when there is potentially something there and they should be able to and should be almost in fact required to at least explore that as an alternative to try to get a recovery, if they're entitled to a recovery. I wasn't trying to say that they were or not.

As far as the suggestion of mediation, it is always hard to say that you're against mediation. The only thing that I would say, Your Honor, is that New GM has hired Ken Feinberg, who is a very well known person who tries to figure out how to deal with circumstances and to how to adjust situations on a non-legal base, but to try to negotiate a resolution.

Mr. Feinberg is working on the matter but he hasn't -- while studying what to do he hasn't taken it to the next step. And my own feeling about mediation is that we would like to see whether Mr. Feinberg -- what Mr. Feinberg will do and not do and let's see where the legal issues lie, but understand that the overall sentiment that Your Honor expressed, which is that at the end of the day if there's going to be a negotiated resolution you better do it -- you're better off doing and being able to pay the people who claim to have suffered injury, better off paying them than to end up building up a big load star and paying other people.

Your Honor had asked what the -- to confirm what these lawsuits were about. Your Honor was absolutely correct that under the MSPA, the asset purchase agreement upon which New GM took assets, that New GM assumed the liability for the glove box warranty, the lemon law liability, and for accidents, incidents that led to the loss of life, personal injury, or property damage for anything that took place after the sale. So if there was an Old GM vehicle that was -- got into an accident after the sale and that led to an injury issue that was something that New GM assumed the responsibility for.

These lawsuits are not those cases, and we didn't move by the way just so it's clear -- we did not move to

enforce Your Honor's injunction for the presale accidents, which were actually retained liabilities under the MSPA. We purposely carved out the accident victims whether it's presale retained liability or post-sale assumed liability, because we wanted to focus in as to what these lawsuits were about. These lawsuits are about a claimed economic loss, the value of a car which is six, seven, eight, nine, ten years old for the loss in value because of the announcement that there was going to be an ignition switch recall and that that car had lost its value until the time that it is being repaired through the recall or not. I'm not sure if I can figure that out.

THE COURT: Pause please. Maybe this question is better directed at your opponents. But is this before or after the cars were fixed?

MR. STEINBERG: This --

THE COURT: I mean the loss in value, because I would assume that if a car hasn't been fixed it would lose value, but I'm not sure what the view of --

MR. STEINBERG: This has --

THE COURT: -- parties would be after it's been fixed.

MR. STEINBERG: This I don't think has anything to do with the cars being fixed or not, because by virtue of the recall New GM is committed to fixing the cars, replacing

the ignition switches, and to doing it tentatively now they think they'd be able to complete it by the end of October of this year. So everybody is going to have their car fixed and so the ignition switch is going to be fixed. This is a perceived loss in value of a car that has some history on it for the -- because of the announced recall for whatever that loss of value is.

So frankly in one of the individual cases that was brought in Texas where we were involved in a litigation as to whether all of the cars with the ignition switch issued should be parked. The actual lawsuit was about a 2006 Cobalt -- Chevy Cobalt which had 165,000 miles on it, and the issue was the deterioration in value of that car by virtue of the announcement of the ignition switch recall. That was what that lawsuit was about.

The injunctive relief was whether all cars should be parked because of a perceived defect between now and until it was repaired.

But that was the nature of that lawsuit, and I know that if I'm not properly characterizing how the economic losses are I'm sure that the people who'll follow me at this rostrum will be able to -- be able to do that, but that's my understanding of it.

These are people who have not had any accident, any property damage, or personal injury, this is for the --

and they are going to get compensated for -- they are going to get their -- the repair of the ignition switch by virtue of the recall, and I think that to the extent that they had to do it themselves before the recall has a provision about whether they get compensated for that as well, but this is for the perceived deterioration in the value of their car by virtue of this announcement.

Now just to make it clear too because it deals with the issue, Your Honor, as to what's, you know, the New GM conduct versus the Old GM conduct. I think Your Honor had talked about that. All of the -- all of the cars with an ignition switch issue, all of them were Old GM vehicles. By the time of the sale the ignition switch had been corrected in the cars. The recall --

THE COURT: By that you mean new cars then being constructed?

MR. STEINBERG: Right.

THE COURT: Okay.

MR. STEINBERG: The issue why the recall involves some post-sale cars is a nuance difference.

What happened was someone with a new car, which had a good ignition switch, would go in to have their car repaired and there was a possibility that the person who repaired that car, which may have been a GM dealer or may have been someone totally different, they may have actually

put in an old ignition switch part. They may have taken a good part out and put a bad part in. And since New GM didn't know whether -- whether that -- which cars that occurred to it announced the recall for some post-sale cars. But the cars that would ever be impacted by this is a very, very small element, but New GM is repairing all of those ignition switches.

So the issue in our view is that we believe that everything they're talking about relates to Old GM conduct, Old GM manufactured cars, and that -- and that what they're trying to build on is the fact that under the sale order and the MSPA New GM accepted as a covenant, not an assumed liability, but a covenant, to comply with -- with the federal laws relating to recall, and they're saying that that somehow creates claims because New GM didn't recall these vehicles fast enough and that they should have done it faster. And we believe that all of that relates to -- all of those claims whether they could ever assert that as a private right of action, which we don't think is correct, we think all of that is an Old GM retained liability issue.

Now, I don't expect them to agree with my recitation of that, but that is the nuance, right, that is the issue as to why it's not a clear demarcation.

What is clear is that if New GM manufactured and sold the vehicle and anything happen to do that vehicle that

is not a retained liability, that is a --

THE COURT: An ordinary liability.

MR. STEINBERG: -- that is an ordinary New GM liability. And if there was an accident that has taken place based on an Old GM vehicle, that is not before Your Honor, that is not part of the list of ignition switch actions that we brought before Your Honor, that's going to go forward in New GM, understands that New GM is defending that. It's not also part of the MDL. So that is -- that is why I think --

THE COURT: Pause please, Mr. Steinberg, I'm trying to keep up with you.

What was the very last thing you said, the nuance you were making on what would still be going forward?

MR. STEINBERG: What is going forward is if there's an accident relating to an Old GM car and if there's an accident relating to a New GM manufactured car.

THE COURT: Any kind of accident.

MR. STEINBERG: Any kind of accidents are going forward.

With regard to just the glove box warranty and the lemon law, just so Your Honor understands the nuance that we put in our papers, is that lemon law is defined in the MSPA, it's defined as that you need to have brought it more than one time to have a repair and it wasn't done. And our

argument is that while we did assume lemon laws none of these ignition switch actions that have been pled to date talk about having brought it once to have it repaired and it wasn't repaired and the second time it wasn't repaired to qualify within the definition of what a lemon law means for purposes of our assumption.

So I think it's correct that we did agree to assume lemon laws, but -- a lemon law type claim, but none of what is being asserted here fits within that paradigm.

If I'm wrong and there's a particular nuance out of all the lawsuits that have been brought that was one of the elements that we had asked for in our motion to enforce which is in effect to show cause, tell us why you think you're not otherwise bound, that you fit within the lemon law that we assume because of your particular fact circumstance and then we would evaluate it. Because I can make the general statement, but there may be a specific exception that I haven't accounted for, but the general statement is as far as I'm aware, based on the general pleadings that have been done, is that no one asked to have this being repaired a second time. And as far as the glove box warranty we're -- for all of these vehicles we're -- or almost all these vehicles we're outside of the glove box warranty, it's expired by this point in time.

So I think, Your Honor, with regard to the issue

that you had raised about the threshold issues we actually had thought that the issues that had been raised in the adversary proceeding under Rule 60 were all threshold issues. We understand the differences, and if it turns out we can streamline discovery significantly by taking out fraud on the Court that may be a better way to go, and we do agree also that the discrimination issue that was raised by Mr. Weisfelner in his papers is a pure legal issue. I frankly think Your Honor has decided the legal issue before, but it's a pure legal issue and we think it should be taken off the table. And frankly there's a practical reason why it should be taken off the table and we eluded to it in our papers.

One of the things that Mr. Feinberg has been hired to do is to evaluate whether there's something that should be done to these prepetition accident victims, people who have actually had an accident to which are a retained liability should New GM --

THE COURT: That would mean people who were injured in prepetition accidents who were only getting 30 cents on the dollar who had filed claims --

MR. STEINBERG: That's correct.

THE COURT: -- or who had blown the bar date but were actually hurt?

MR. STEINBERG: Right. That's why Mr. -- that was

one of the primary reasons why Mr. Feinberg has been hired, to see whether there's something that should be done as a general basis.

If someone is going to say that if we did someone on a voluntary basis for those victims, those people who actually suffered an injury from an accident that we're somehow picking up liabilities for a bunch of people who are worried about the deterioration and the value of their car then I think we need to know that, and so therefore we want to put this as an earlier issue and not a later issue. And if they want to abandon it because they don't think it's a proper issue to raise then that's okay too. We're not trying to litigate something that they're prepared to abandon, but it has been raised.

If you actually read the pleading filed by -- on this issue it makes it seem like it's a very important issue and we're prepared to meet it head on and to -- and I don't think it requires any discovery at all.

If you just bear with me just one second, Your Honor, just to go through the rest of my notes.

I think that Your Honor when we -- when I came into court and I think Your Honor summarized it correctly we had actually agreed in many concepts with the people that we had spoken with, and so there was a general understanding that they would stand down on litigation and that those who

didn't -- who weren't prepared to stand down would have to show cause as to why they think they shouldn't stand down.

And there was a recognition on our part that to the extent that we got bogged down for some reason that we couldn't envision on the threshold issues and the other bankruptcy-related issues needed to be brought to attention or that they thought that there were issues that were not bankruptcy-related issues but they had decided to in effect wait on and that they would otherwise be a part of the MDL we had agreed, and I think the date differences were end of July versus beginning of September, we would have an effective grace period but then we thought they had to come to Your Honor. If they wanted to relax the stay because they thought they were otherwise being aggrieved because this process wasn't playing out the way that they had envisioned or that they thought they --

THE COURT: You mean the process before me in terms of --

MR. STEINBERG: That's correct.

THE COURT: -- getting these issues --

MR. STEINBERG: That's right.

THE COURT: -- judicially decided?

MR. STEINBERG: They then could try to make their case before Your Honor, and we thought that that was okay. I mean no one -- no one could quite envision exactly how

this is going to go, we wanted to have a breathing spell to make sure that this is going along in the direction that everybody thinks it's going along, but we were not looking to permanently foreclose anybody's rights if they thought an adjustment had to be made. And so if they needed to have that explicit as part of their agreement up front to stay their litigation then we were prepared to do it, and I think there was just a difference in a month, and I think our date was -- probably made more sense because of the inherent delays that we'd have in the system.

I think, Your Honor, we had agreed on most of the threshold issues and Your Honor's tentatives had addressed the rest. We had actually agreed to in effect do this in two steps, and Your Honor has properly identified that while doing it in the two steps we should make progress and try to identify what will be litigated in the second step. And I think Your Honor's tentative addressed the differences we had on stipulations of facts versus admissions and the timing of submissions.

So I think Your Honor's tentatives have bridged the gap where we differed and we were fairly close coming into the courtroom, and I think you for that and I'll turn over the rostrum to other people.

THE COURT: Before you do, please, Mr. Steinberg.

The day after you wrote your letter, I think yours

was on April 30th, I got both a letter and a black line from Mr. Weisfelner where he'd massaged what had been one of your paragraphs and he gave me a black line articulating issues that would be decided as threshold issues. Is there any difference between you and Mr. Weisfelner, that is between your thinking and his black line mark up?

MR. STEINBERG: Yes. The --

THE COURT: On that point, how so? I didn't follow that.

MR. STEINBERG: Well our original proposal included fraud on the Court being a threshold issue and they had crossed that out, so that is one difference.

The second difference was that we thought the discrimination argument was a threshold issue and they had said they didn't think it should be a threshold issue.

THE COURT: So he wanted to drop fraud on the Court from the first phase and you leaned in favor, although I thought you -- the way I heard you you didn't think of it as something you felt strongly about, you thought that with limited discovery it could be considered as a Phase I issue and you favored inclusion of the discrimination argument and you understood him to prefer not to deal with that now.

MR. STEINBERG: I think he crossed that out and asked to not deal with that, yes.

THE COURT: Okay.

MR. STEINBERG: So --

THE COURT: Thank you.

MR. STEINBERG: -- and so just to be clear, while I thought fraud on the Court should be a threshold issue because it's a Rule 60 issue, to the extent that we can accomplish something significant on the discovery front in curtailing it then I understand clearly the logic of making that a secondary issue.

THE COURT: Okay. Thank you.

Mr. Weisfelner.

MR. WEISFELNER: Judge, thank you, I don't know what Your Honor's preference is.

Not only have some of our thoughts matured and changed over time but based on Your Honor's tentatives and the questions you asked they may change even further.

I don't know that we can accomplish a lot in a ten-minute recess, but one of my colleagues passed me the note to ask if you thought it would be appropriate. If not I can start and go forward and take a break whenever Your Honor thinks is good.

THE COURT: Well if you think it would be productive I'm not going to stand in the way of that, Mr. Weisfelner. I don't want to use up what is relatively limited time that we have if it drifts, and there are a lot of people both on the phone in this courtroom and presumably

in overflow courtrooms, but if you think you can usefully use ten minutes I think that's a good investment.

MR. WEISFELNER: And, Your Honor, I think ten minutes is the right -- we're either going to make progress in ten minutes or we're not.

THE COURT: Okay.

MR. WEISFELNER: So I wouldn't want anymore than a ten-minute adjournment.

THE COURT: Then let's recess until five to 11:00 on the clock up there.

MR. WEISFELNER: Thank you, Judge.

THE COURT: Thank you.

(Recess at 10:44 a.m.)

THE COURT: Have seats everybody.

MR. WEISFELNER: Your Honor, thank you for the time, I think it was well spent.

Judge, for the record, Edward Weisfelner, Brown Rudnick LLP appearing on behalf of the Robinson Calcagnie firm, and I have Mark Robinson of the firm with us in court today as well as Haigins Berman (ph), and as Your Honor has indicated while they reserve the right obviously to correct me where I go wrong we are working closely together with Sander Esserman of Stutzman, Bromberg, Esserman & Plifka, as well as Elihu Inselbuch of Caplin & Drysdale, and as I think Your Honor knows the collective plaintiff group has also

asked the three of us to coordinate our activities as we deem necessary with Ms. Siganowski (ph) of the Otterbourg firm, and we will utilize her services as appropriate and necessary.

Judge, I want to as Mr. Steinberg did address your tentatives, move on to your questions and avoid merits, name calling, and the other no-noes that Your Honor laid out, but I would like to note a couple of factors that I think are relevant and bleed directly interest your tentative ands your questions.

What one may characterize as part of the good news there's lots of information in the public domain regarding the defect that's the subject of the recall. Lots in the public domain about who knew what when.

I characterize that as good news to the extent that, and as Mr. Robinson has indicated to me, in his many, many years of litigating in the auto products field both in terms of Toyota, the Ford Pinto, claims against GM, it's rare that you see this level of information already in the public domain before discovery or formal discovery between the parties necessarily starts. That's part of the good news.

Part of the bad news is, depending on your perspective, but I think it's a relevant factor in understanding how the parties can or can't get together in

terms of the timing of the resolution of the issues, the fact of the matter is that New GM, as we understand it, is the subject of a -- it's a term of art -- boatload of regulatory investigations. We are aware of congressional investigations, and maybe there's more than one, at least one attorney general investigation, an SEC investigation. We understand that New GM has commenced its own internal investigation, and I may have run out of fingers to count just how many investigations they're currently the subject of.

I mention those because one could imagine a sensitivity on the part of a corporate entity to necessarily engage in discovery during the pendency and/or before investigations of both civil and potential criminal consequences are concluded. And I can only advise Your Honor that I think it behooves both sides to take the reality of what's going on in the marketplace into consideration with regard to the timing of discovery or the narrowing of issues between the parties. There are other factors that might influence either side of the tables' speed with regard to those issues.

Your Honor, to address the tentatives.

First of all I think from a starting perspective, and I was unavailable for another meeting among plaintiffs that took place yesterday in New York, but I've gotten a

download, and I'm not blaming Mr. Steinberg, Your Honor ought to know that with one outlier, and only one outlier that I'm aware of, the plaintiffs as a group are on the same page and intend, unless I or Elihu or Sander slip up, to allow one or the other of us to speak for the group, and I presume that outlier will speak for him or herself at an appropriate time.

And I also understand that the difference of opinion between all of the plaintiffs and this one single plaintiff really comes down to what ought the threshold issues be that the parties work towards preparing and presenting to Your Honor for as efficient resolution as is possible. And it boils down to a distinction between whether or not we focus our collective attention on the what we think is the right threshold issue, whether or not parties impacted by this ignition switch problem were denied due process, and if so what's the appropriate remedy?

They would, the outliers would like to put on the table as part of the threshold issue a determination of whether or not there was fraud on the Court. And, Your Honor, again, for reasons that we can delve into I don't think they're necessarily appropriate for today because there'll be another status conference where I think whatever remaining differences there are between the plaintiffs taken as a group and New GM can and will be resolved down to the

details of timing for discovery, briefing, and subsequent hearings.

Your Honor, the next tentative you talked about was the MDL proceedings and I'd like to unpack that just as a matter of fact into two parts, because I think as to part number one there is unanimity in the entirety of the courtroom. All plaintiffs and New GM as to what happens in step one, and as I understand it only a very narrow disagreement on what I'll call step number two.

And, Your Honor, please forgive me because the one thing I'm not is a class action or tort lawyer, I'm just a measly bankruptcy lawyer, but this is what I understand the two parts to be.

Part number one, on May 29th in Chicago before a joint panel on multidistrict litigation, which I understand consists of some seven Article III judges, that panel will determine the venue for any further multidistrict litigation consideration, and I've been told that the panel has under consideration --

THE COURT: Pause. When you put it that way I wasn't clear on whether you were talking about it consistent with my understanding of what would be done by the judicial panel and multidistrict litigation. Is this 28 U.S.C. 1407?

MR. WEISFELNER: Yes, it is, Your Honor.

THE COURT: Which as I understood it addresses the

locale for pretrial proceedings in multiple litigation after which when the pretrial proceedings end they're farmed back to whatever districts, venue would otherwise be appropriate?

MR. WEISFELNER: Correct. So --

THE COURT: Now were you meaning -- forgive me. Were you meaning to say something different than my -- what I just said?

MR. WEISFELNER: No, other that where I think we all agree is that nothing is going to interfere with, and none of the parties or the Court, nor will the Court be asked to interfere with the activities of the joint panel on the 29th, which we all understand to mean that they'll pick an ultimate venue for MDL proceedings as between Michigan, California, New York, or some other jurisdiction.

Where we appear to have a difference of view, as I heard Mr. Steinberg discuss the issues before Your Honor, was how far should the MDL go once it receives the case some time after May 29th?

THE COURT: By that you mean the temporary transferee court after it's been transferred by the panel?

MR. WEISFELNER: Correct.

THE COURT: Okay.

MR. WEISFELNER: And as I understand it what that court will do is procedural, it will among other things select lead and/or liaison counsel not for bankruptcy

purposes but for purposes of actually trying the case, and as typically happens would require that the many complaints filed against New GM -- and as I understand it they're up to some 60 plus different class action complaints -- be procedurally consolidated into a single complaint, a process that my guess will take a period of time, and certainly a period of time beyond what we anticipate to be the next status conference before Your Honor.

But we wouldn't want the record of this or any other proceeding before Your Honor to be used or cited for the proposition that from Your Honor's perspective getting the complaints narrowed down to a single complaint, doing whatever else it is that the MDL judge typically does, which is figure out which counsel they're going to for lack of a better word lead the fray, there should be nothing that impacts that procedural mechanism from moving forward. It's going to in our view at least get the parties or -- and the issues that may ultimately be tried narrowed and get the disbursed plaintiffs' groups better organized on the merits should they ever get to the merits.

THE COURT: Pause, please, Mr. Weisfelner.

MR. WEISFELNER: Certainly.

THE COURT: Can you envision a scenario under which rulings by me might affect the extent to which claims remain which would then be the subject of gathering up and

bundling in that amended complaint?

MR. WEISFELNER: Certainly, and again, this is just my opinion, but when viewed from the perspective of judicial economy if there is a single complaint and Your Honor were then to determine what's kosha (ph) and what's unkosha (ph) about that amended complaint one has an easier vehicle to start making chops to.

As opposed to, and it sort of bleeds into some of your other tentatives and some of your other questions, have a multiplicity of lawsuits and then having to parse each and every one of them to determine what portion of the allegations, the complaints, the prayers for relief does or doesn't violate or do violence to Your Honor's directive as it currently stands or as it may ultimately morph after this procedure currently before you develops.

THE COURT: You said what I had anticipated that you would say. The corollary of that would at least seemingly be that after the panel sends it wherever it's supposed to go, and I'll call it the transferee judge, even though it may eventually go back somewhere or to different places, that there simply be a stop, look, and listen, vis-à-vis, interfering or not interfering with the acts of the transferee judge after determinations have been made in this court and everybody in this room has had his chance to speak his peace.

MR. WEISFELNER: And, Your Honor, I think like many things in life it's all a matter of timing. Because I anticipate the transferee court is never going to get around to the job of figuring out what's the next procedural steps to narrow the issues that may be before him or her. I think we'll be further advanced on the issues that need to be resolved by Your Honor, and the coordination between Your Honor's decision making process and what does or doesn't happen in the MDL will be much further advanced.

So while I'm not sure that it benefits anyone to pursue this in any greater detail, my only point with regard to this is I detected a difference between where we come out, where I thought New GM was coming out on this, and what I heard Mr. Steinberg say earlier this morning, which is we have to leave open the possibility that the MDL proceedings may be put on ice simply because this process is still ongoing without a resolution.

THE COURT: Well stand by. Mr. Steinberg, come on up and take Mr. Weisfelner's place for a second.

Is there a substantive disagreement here? Because I thought I was hearing consensus that we'd let the MDL panel decide who the transferee district should be and then we're going to have stuff that goes on here.

Would you have a substantive or procedural problem with doing a stop, look, and listen in this court to then

decide whether I should enjoin the transferee judge from doing anything more, or should not do so?

MR. STEINBERG: Your Honor, I would agree with everything that you say except that I would assume that you would be enjoining the parties not the court from moving forward.

THE COURT: Correct. And I don't think in 13 and a half years I've ever enjoined a court, but I enjoin parties all the time.

MR. STEINBERG: Then other than that, Your Honor, I agree with exactly what you said.

THE COURT: Okay.

All right, Mr. Weisfelner, I think that issue just went away so come on up and let's proceed.

MR. WEISFELNER: Great.

Your Honor, we take your points to heart with regard to tentatives three and four both with regard to the propriety of standstill agreements and your admonition that we don't necessarily -- we shouldn't necessarily be rushing in favor of getting it right.

One area where I think the parties may need some additional time with each other but maybe we could explore in a little bit more detail Your Honor's tentative with regard to new complaints along the lines of what Mr. Flaxer filed.

And I will tell Your Honor frankly that before Mr. Flaxer hit the docket with his complaint I know I and my shop and I venture to guess many other shops were working on similar complaints.

Viewed from our perspective is the right procedural mechanism for bringing the issue before Your Honor; however, once we had the advent of New GM's motion frankly I'm not sure what the procedural advantage is of moving forward with that adversary proceeding complaint much less inviting other parties to replicate it or to file additional or add-on adversary proceeding complaints. It may -- it may involve some interesting work by a bunch of bankruptcy and/or class action firms. I think it's just going to clog the docket here, and I think procedurally we were of the view that rather than lose any of the allegations or procedural advantages that are perceived or actually exist in the adversary proceeding they all ought to be subsumed within the contested matter. Parties ought to be afforded an opportunity to file their own objections to the motion, join in our objection to the motion, or anything in between.

But I'm not sure, nor do my colleagues feel, that there's necessarily a substantive or procedural advantage to separating the adversary proceeding and giving it a life of its own even for the purposes of inviting other people to

file new adversary proceedings.

THE COURT: I partly lost you with the negative that was in your last sentence. In other words you're saying the formalities aren't important, put it in a big bundle and just decide it all together or am I --

MR. WEISFELNER: That's exactly --

THE COURT: -- stating it too crudely?

MR. WEISFELNER: No, that's -- well, you couldn't have stated it any cruder than I would have had I thought about it, but that's exactly our sentiment, you know, let's have one bundle and not have separate adversary proceedings and separate contested matters, let along invite people to file new adversary proceedings that address the same issue. And I think the parties did intend on conferring with each other on appropriate procedural mechanisms to allow that ball of wax to form without violating anybody's procedural or substantive rights. And I think we can come up with in very short order, certainly before the next status conference, the procedural mechanism that we think is appropriate. But what we would like to avoid is either the necessity or the thought out there that people better rush to file, you know, identical or new or expanded adversary proceedings.

THE COURT: Now that's a different point than the separate -- at least in your mind from the separate point

that I thought I was making that if there are any substantive issues on the table that haven't been potentially to be put on the table that I want to hear what those points are.

MR. WEISFELNER: And I think that can be readily accommodated by virtue of setting a date by which parties will want to respond to the motion that New GM has filed. I mean we obviously filed within, and I think before the expiration of 24 hours. Obviously there may be people out there with further reflection that come up with better, different, more expansive responses and we don't want to preclude that. We just don't want to get into a (indiscernible - 01:19:05) of a separate docket for an adversary proceeding, a separate docket for contested motion practice, and any possibility that, you know, the resolution of those issues shouldn't be at some point joined. And again, I think the parties can work out a proposal for Your Honor's consideration that deals with melding together the adversary proceeding and the contested matter.

Number five, Your Honor, which I guess was the issue between stipulations and admissions. And, Your Honor, I think the answer is we get it and the parties will work as best they can on stipulations and will only elevate the heat intention as we have to both in terms of narrowing discovery and avoiding unnecessary contests that have to be determined

by this Court. And again, you know, I'm focusing on all of this from the perspective of the what we've referred to as the gaiting issue.

And this -- and I want to sort of then flip to the questions that Your Honor asked, and either attempt to respond to them or tell you why I'd like to evade them as best I can.

And again, you know, I'm focusing on all of this from the perspective of the what we've referred to as the gaiting issue. And this -- and I want to sort of then flip to the questions that Your Honor asked, and either attempt to respond to them or tell you why I'd like to abade them as best I can.

THE COURT: Before you move on to those, please, Mr. Weisfelner, the one issue that I still see as open between you and Mr. Steinberg is with respect to two issues that might or might not be addressed as part of Phase I, the most classic threshold issues, fraud on the Court and discrimination amongst different kinds of creditors.

My preference would be in terms of meeting my own responsibilities would be to get issues on the table and teed up for judicial determination, and to the extent practical decided sooner rather than later, which would cause me to come to the view that on fraud on the Court, if

we could deal with that without having the associated discovery bog us all down, it would be handled sooner rather than later and the same thing with discrimination, which doesn't seem to involve discovery issues.

I sense that you would prefer to defer fraud on the Court, but would you be of the same mind to defer it if just the limited discovery of the type that Mr. Steinberg recommended were undertaken so that issue could be teed up with the others?

MR. WEISFELNER: Your Honor, we would be opposed to it and let me explain why.

First of all we share Your Honor's perspective that issues that could resolve matters from the perspective of either side where discovery can be limited ought to be preferred on issues that potentially don't decide the matter even if they don't require a lot of discovery.

So let me take the easier example first, the discrimination issue, raised in retrospect unfortunately in my papers as opposed to anybody else's. And, Your Honor, it seems to me that we could brief that issue at whatever cost is required. It doesn't require discovery. Your Honor could make a ruling.

And notwithstanding how you rule I don't think it gets the plaintiffs any closer to trying claims against New GM or for that matter New GM any closer to preventing the

plaintiffs' claims from moving forward based on their reliance on the injunction and the sale order. It's an interesting issue but it's in no event dispositive of either parties' position on the fundamental issue.

For that reason, even though I was the one who first raised it and frankly raised it before I understood the entire history behind the metamorphous that the final sale order took on the carve out for wrongful death, injury, and property damage, which as I understood it originally what New GM was purporting to assume was wrongful death, personal injury, property damage solely with regard to cars that it sold post-petition or post-sale rather, and it morphed at the direction in part of various attorneys generals and consumer advocates.

THE COURT: In the middle of the trial.

MR. WEISFELNER: Sorry?

THE COURT: In the middle of the sale trial.

MR. WEISFELNER: Right.

THE COURT: Yeah, I remember the history.

MR. WEISFELNER: Okay.

THE COURT: Oh, by the way I'm going to interrupt you. I want each side not to tell me today but to think about the extent to which I'm allowed to use my knowledge of what happened back then in connection with the findings of fact.

MR. WEISFELNER: Well, Your Honor, I could tell you now without even consulting with my colleagues, unless Your Honor were to be willing to undergo a lobotomy I don't know how anyone could take the position that Your Honor cannot, should not, or may not take into account your knowledge and familiarity with what transpired during the bankruptcy proceeding and in fact during post-reorganization or post-restructuring matters that were brought to Your Honor's attention.

But I want to sort of get back to --

THE COURT: Pause.

MR. STEINBERG: I was going to -- without inferring whether there should be a lobotomy or not -- I was going to say that we agree with Mr. Weisfelner as well, that you should be able to take into account your position.

THE COURT: Okay. Fair enough.

Go on then, please, Mr. Weisfelner.

MR. WEISFELNER: Any way, Your Honor, I'm sort of getting back to what we ought to be collectively spending time and attention on.

From the plaintiffs' perspective we ought to be spending time and attention, which converts into money and effort, in dealing with as narrow a set of facts that we have to deal with to determine whether or not the sale order applies to our underlying clients.

The discrimination argument, Your Honor, may be left on the table in the unlikely from my perspective and unfortunate event that we lose the threshold issue. But why it needs to be determined today, even though it's an issue of law and not a matter to discovery, it's not dispositive from either sides' perspective, it doesn't get us closer to where either one of us wants to get to.

And if I could then turn to the fraud on the Court issue.

Your Honor, there are subtleties on top of subtleties on top of details that suggest to us that you could not make a determination with regard to fraud on the Court with anywhere close to the narrow discovery that Mr. Steinberg suggests. And it's sort of all subsumed I think or fear in the whole due process argument, and without in any way trying to argue the merits but just to lay out what the issues are as objectively as I can without tilting them in either direction, remembering again that there's a lot of information in the public record about what GM knew when they knew it with regard to the ignition switch.

I think that New GM would say, well, wait a second, determining GM's -- Old GM's knowledge and for that matter New GM's knowledge isn't necessarily determined -- and I use this very bad analogy but I'll give it to you any way -- by focusing on the guy in the test laboratory who's

got grease up to his elbows and is wearing overalls. That person may have knowledge, but it may not necessarily be imputed to someone sitting in a conference room who has the luxury of wearing a suit and tie every day. And I think New GM may ultimately argue that Joe the mechanic's knowledge isn't to be imputed into an executive office let along a board room.

Now frankly we're encouraged by the fact that plenty of people who wore suits and white collars have already put their position on the record or it's otherwise discoverable through things that the National Highway Safety Council has made available or the Congress has made available or what we can read and report on in the press, but to suggest that we can or should pursue fraud on the Court to my mind and gender is a discovery dispute at three different levels by the way. Old GM, New GM, and based on not my intuitions, but my discussions, I think we're going to get into a discussion of what treasury in its role as the intermediary between Old GM and New GM knew or didn't know.

And as much as I like spending time with Matt Feldman and Jim Milstein (ph) and Harry Wilson, I don't know that I necessarily want to get involved in discovery of what any of those people knew or should have known in the context of proving --

THE COURT: You used the word should have known.

Since when is should have known an element of a claim of fraud against the Court?

MR. WEISFELNER: Your Honor, I'm not sure that it is, which is another reason why when I think about this, and maybe I think about it in an overly simplistic fashion, but I have the comfort of knowing that my co-counsel thinks about it the exact same way, in fact all of the plaintiffs think about it exactly the same way with the exception of one possibly outlier, and that is if I start with the proposition, understanding that it's a proposition and not a proven fact, that the consumers of this product were known to have had a defective product and that Old GM did nothing to let those people know that they had a defective product, didn't give them notice of the bankruptcy, didn't give them notice of the sale, and didn't give them notice of the extent to which the sale could affect their rights, if our contentions are accurate isn't it the case that these individuals were deprived of due process?

In that context should the sale order apply to them or should some portion of the sale order apply to them? Not a revocation of the sale order, we're not going cut it up and carve it out and chop it up as it relates to anybody else other than people who prove to you that they were denied due process.

Why we need to then get into at this stage the

other elements of fraud on the Court, Your Honor, we respectfully suggest is beyond what we ought to be doing if we want to do something efficient and effective from the perspective of these injured parties.

THE COURT: Do you think that for the purposes solely of my case management discretionary calls, as contrasted to the merits in figuring out how we should tee these things up, it's appropriate for me to assume that there might be a difference between defrauding the driving public on the one hand and defrauding the Court on the other?

MR. WEISFELNER: Yes. And, Your Honor, I'd make the distinction though, we're not defrauding the driving public, that's not our contention. Our contention is that the number of people who bought, leased, or owned these cars, and to my knowledge, the number is something below 3 million, I could be wrong, so it's not the driving public, it's these specific people that were sold cars with this ignition switch problem.

And again, this is not the place or time to get into this, so then I won't, I just want to get back to your issue. I do think that it's a matter of Your Honor's discretion in setting our own calendar in terms of dealing with dispositive issues first.

If Your Honor were to decide that these people

were denied due process, and therefore, the injunction that New GM bargained for should not apply to them, case over, from our perspective.

It's only if Your Honor were to decide there was no denial of due process, that we may want to ask Your Honor to tee up and consider other issues. Until that time, I think it's a matter of case management and Your Honor's discretion, that's the right way to go. And I say that because we've thought about it, and we think it's the right way to go, not to be determinative of what Your Honor decides in terms of exercising your own discretion.

But we clearly think it's the easy way to go, and I'm not sure I understand how expanding either the factual issue or the legal issue into fraud on the Court serves the purpose of narrowing the issues and letting the parties and the Court get to the -- a resolution in the most cost-effective manner possible.

Now, Your Honor, I'm happy to sort of move on to the questions that Your Honor had.

THE COURT: Go ahead. And I'm going to do this in such a fashion as I possibly can, so as not to insult the Court. But you asked what's left its engendered so much heat, and with all -- in other words, what are the damages that people could possibly be concerned about here, since wrongful death, personal injury, and property damage are off

the table.

And Mr. Steinberg in his opening tried to -- or talked to you about five, six, seven, eight-year old cars driven a lot of miles that have a broken switch that GM's prepared to fix, so what are the damages.

Oh, and I think he mixed in the fact that we're talking about a pretty cheap set of vehicles, Chevy Cobalts and other such cars. And, Your Honor, in the simplest terms, it's our view that the measure of damages that plaintiffs could prove were they permitted to pursue claims against New GM, notwithstanding your injunction, is a matter for determination by a court of competent jurisdiction who doesn't have New GM waving the injunction in front of it.

Once that injunction is gone, Your Honor's question is really within the bailiwick of Court's interpreting state law, federal --

THE COURT: Forgive me, with respect to you, Mr. Weisfelner, that isn't the purpose of my question. The purpose of my question is to ascertain the extent to which claims your guys want to bring, is or is not within the scope of the existing sale order, which is the question which we start with after which we then determine the extent to which the provisions of that sale order are in whole or in part unenforceable against your constituency.

MR. WEISFELNER: Ah.

THE COURT: So please do not restate or misunderstand my question.

MR. WEISFELNER: Thank you, Your Honor. I did -- I misunderstood it completely.

I should call to Your Honor's attention, and I'm hoping that this is in the process of being fixed, because I've been told that's in the process of being fixed, but one would hope that as this process moves forward and the parties reach consensus on how to form and present the issues in the most effective way, that we don't have exacerbation of the problem or the issue.

We were told the story about an individual who in connection with the recall went to his or her dealer to have this ignition switch fixed, and was presented by the dealer with a form that she was being told she had to sign before the work could be done on her car.

And the form, while I haven't seen it, I'm told, either had the individual consenting to arbitration of any issue that may arise in connection with the work that was being done and/or contained a waiver of any claims that could be asserted in connection with any of the work that's being done.

Now, I'm told that these issues were brought to New GM's attention and New GM has or is in the process of ensuring through communication with its dealers that the

fixing of the switch is not to be conditioned on parties signing anything that may impact their claims or causes of action going forward, and that to the extent that people have already signed anything as a precondition to having their car dealt with on a recall, that it won't be enforced or sought to be enforced by New GM.

The other thing I want to bring to Your Honor's attention, and again, it's not within my bailiwick, except that I've heard enough about it from underlying plaintiffs' lawyers and have read enough about it is, there is not an agreement between this side of the courtroom, meaning the plaintiff's side --

THE COURT: Pause please, Mr. Weisfelner.

Right after you told me that anecdote, which troubled me, as it would trouble most folks I think, you said that when GM, New GM heard about it, it pulled the plug on that deal -- issue acting that way, and told them, you didn't use these words, you, jerk, you can't do that. So why did you tell me that?

MR. WEISFELNER: I told you that for at least two reasons. Having New GM tell the dealers to stop acting like jerks may or may not cause the new dealers -- the underlying dealers and the fixers, guys who are dealing with the recall, to stop acting like jerks. And I just wanted to let Your Honor know that we are concerned about people acting

like jerks on a going forward basis.

The second reason I brought it to Your Honor's attention is, to the extent that people have historically signed the pieces of paper that the jerks gave them to review, I haven't seen anything in the record other than an oral communication that said New GM will not hold those releases or agreements to arbitrate against the plaintiffs, I raise it now only because for all of our benefit, we'd like to see something about this in writing at some point.

I brought it up in the context of Your Honor's concern about presale conduct and post-sale conduct, and Your Honor, the plaintiffs very much agree that to the extent that one could readily distinguish between actions that go to New GM's conduct, that they can't, as Mr. Steinberg indicated, properly be the subject of the injunction.

But the devil is also in the details on this one because we're not --

THE COURT: Pause for a second. Mr. Steinberg, I'm going to give you another chance to be heard, why don't you sit down for now.

MR. WEISFELNER: In terms of what constitutes New GM's actions versus Old GM's actions, you heard at least one example of how it's difficult, and that is New GM does a recall and could arguably be replacing the ignition switch,

not with a new ignition switch, but with an old ignition switch, or that parties are concerned that, you know, they went to their dealer, they got a new ignition switch, they don't know now whether it was a recalled ignition switch or an old switch.

But, Your Honor, and again, I just mention this, not because I think it needs to be resolved, or because I have any evidence to prove it's true, but a lot of what we're reading suggests that calling this an ignition switch defect is an impermissible narrowing of what the issues are.

The ignition switch may or may not have been the cause of air bag failure to deploy. The fixing of the ignition switch, given the electronic calibrations between the switch and the air bags may or may not address the air bag problem. I don't know the answer to any of this.

Other than to tell you again, when we parse out or attempt to parse out actions against New GM for New GM conduct, or things that New GM definitively agreed to assume as part of the sale process, versus actions that could arguably or do, in fact, implicate the injunction that's part of the sale order is, for lack of a better term, easier said than done.

Nevertheless, the plaintiffs as a whole do reserve the right if this process gets bogged down or takes too long, to say, you know what, maybe the quickest thing to do

is to spend the time and energy that hopefully we won't have to, to parse through whatever's been filed, and to demonstrate to Your Honor that the allegations that are being made, the liability that's being ascribed, and the damages sought to be obtained as they relate to New GM conduct do not implicate Your Honor's injunction.

For now, however, we'd prefer not to get into all of those potentially dicey issues, as to what does and what doesn't constitute a direct claim against New GM that is outside of the injunction, at least until the parties work hard on trying to get to a position where the due process issue gets teed up for Your Honor's consideration.

And if we can do that in an effective vehicle and quickly, then all of the other noise that may be necessary down the road could be avoided. Because whether it's actions against New GM or actions that New GM contends they're not liable for because of the injunction, if the injunction is dissolved as to this group, because of lack of fundamental due process, it doesn't matter.

So I'd prefer, we collectively would prefer to deal with that issue as, when and if it does matter.

I'm going to skip over the lemon law issues, because I don't think we have much difference of view with regard to the answer that you got from Mr. Steinberg. I do want to stress on your question number four, the inability

to get together.

The plaintiffs are together, and with the exception of again one outlier on the issue of what ought to be part of the threshold and what not be part of the threshold, there's not a plaintiff group that we're aware of that isn't prepared to have their interests in the first instance, represented by one of the three of us, with consultation with Ms. Cyganowski, subject, of course, their ability to stand up and say, hey, they didn't present my issue. But we have a commonality of position, a commonality of interest, and a desire to work collectively through these three lawyers.

I'm just trying to see if there was anything else. You've heard our views with regard to an adversary proceeding versus motion practice. I didn't touch on the impact on Old GM and the GUC Trust. And I liked Your Honor took comfort in the fact that Mr. Golden is here, as I do take comfort any time Mr. Golden shows up anywhere.

Look, Your Honor, it's obvious, and you get it, that one of the arguments that New GM may make is if these individuals were damaged or deprived of due process, let's not jump to the conclusion that the right remedy is to have the injunction not apply to them.

Instead let's consider the alternative remedy of having them all get shifted into the category of late filed

claims, judicially acknowledged late filed claims, will now, as part of a bankruptcy process, go through a procedure for determining what those claims might be worth individually or on some class basis.

And when that process is all over, then we can let the GUC Trust and its beneficiaries know that their expected future dividends may have to be adjusted or wiped out in order to allow these new beneficiaries of the trust to, in effect, catch up on distributions that have already been made, if in fact, that can be done as a matter of practicality.

And I anticipate that holders of the units including Mr. Golden's clients and others may very well have an opinion about that.

Again, it seems to me that before we ever get near that thorny issue, where lots of people are going to be impacted, and it may not be practical, if we resolve the threshold issue of whether, because of lack of due process the injunction ought not to apply, then we never get into this issue. Unless someone were to argue that notwithstanding the denial of due process the right remedy is not let the injunction dissolve, but the right remedy is somehow to treat these people as if they had late filed claims, and will now just dilute all of the other beneficiaries of the GUC Trust.

Your last point was on mediation, and like Mr. Steinberg, I agree that litigation is inherently wasteful, time consuming, and not a very efficient way of resolving matters, and that whenever possible, mediation is the way to go.

I just am concerned that given where I started, which is to identify, as I'm sure Your Honor knows, the multiplicity of investigations that are currently underway. Just what the role of Ken Fineberg is, just how much money Mr. Fineberg may have at his disposal to attempt to resolve issues, while we would collectively prefer to mediate than litigate, I'm not sure that the environment is such today that we're presented with that effective choice.

Should circumstances change, as I think Your Honor knows very well, the plaintiffs are as willing to attempt to resolve issues notwithstanding how prepared they'll be to prove their cases and collect their appropriate damages. Thank you, Judge.

THE COURT: All right. Thank you. Mr. Flaxer.

MR. FLAXER: Thank you, Your Honor. I note that I'm working in conjunction as co-counsel with the firm of Wolf Halthenstein (ph) which is here by counsel.

Perhaps, Your Honor, I should jump right into an issue that was maybe the only area where the plaintiff group wasn't able to come to complete consensus. And Your Honor

added some thoughts to it that I think shed a lot of light and were actually extremely helpful in my own thinking about it. Which is in identifying the threshold issues what the sort of philosophical line of demarcation should be and if I heard correctly one notion that Your Honor suggested was things that can be decided on a legal basis, without the necessity for discovery, but that's -- I'm going to sort of pause there, and say discovery, we've talked about a possibility of limited discovery as opposed to more extensive discovery.

So -- and I think that's an important point to keep in mind. Our view has been that the claim of fraud on the Court, which the objection to the motion and which our adversary proceeding both assert, our concern has been that it's difficult to separate it out from the lack of due process point because although superficially I suggest it might be a -- maybe that's not the right word, but it might be -- it may seem that since fraud on the Court is sort of a more broad remedy or has more prongs to it that maybe need to be established that the discovery in establishing that claim would be much broader and take a lot more time.

As I step back from it, and think about it, if there's going to be discovery on a due process violation, I think when the actual discovery process gets going, the discovery on those two claims will be basically the same.

And I think Your Honor got into --

THE COURT: Wait. I was keeping up with you, Mr. Flaxer, until you said basically the same. Obviously under the covers of all this, is that fraud generally is subject to a time limitation, if I recall correctly, it's one of your words, fraud on the Court, it's not, and that's the difference between 60(b) and 60(d).

But I wasn't clear after that what the distinction you were making was.

MR. FLAXER: The distinction I'm making is that if a due process violation is going to be a threshold issue, and we're going to wind up taking discovery on that issue, then as a matter of judicial economy, it may be wiser to include fraud on the Court at that point, because the discovery is likely to be I think extraordinarily similar if not identical.

THE COURT: I'm not inclined to differ with you in that regard, Mr. Flaxer, but I thought the consensus until you spoke was that other folks in the room who spoke before me thought that due process could be addressed at least in major respects without any discovery.

MR. FLAXER: And if -- and my view on that is, I'm -- what I would say is, that may or may not be right. So maybe what we ought to do here to sort of resolve everything for today at least, is let's proceed with the process of

developing stipulations of facts, and lawyers from both sides will work together on that. And when we come back for the next time, I think the parties will be able to advise the Court whether or not they think that based on what's stipulated, we should just put the due process issue to the Court, and put fraud on the Court, perhaps to the side for the moment.

But I don't think we ought to decide that one today, nor do I think we need to. So I don't think there's any need for any difference of opinion going forward from today to the next status conference.

I will confess some skepticism about whether stipulations of fact will be sufficient to address the alleged lack of due process issue, but I'm happy to keep an open mind about it, because as events develop, we all have to be prepared to have an open mind and change.

So our view for today is, we don't have to decide whether or not fraud on the Court should be a threshold issue or not. Let's kick that to the next status conference and let's see how the process goes with developing stipulations of fact.

And I would add as Mr. Weisfelner very eloquently observed, there are a number of government investigations ongoing. I understand that GM's internal report is due fairly soon, I think in early June. That may shed a lot of

light on a lot of issues, and that's another fact on the ground that may affect our thinking when we get to the next status conference.

Trying to focus on your threshold issues, and trying not to repeat, I don't have anything to add to the MDL, that's all been said.

As to the dates for when events should happen, we agree that, you know, on the one hand we want to get in and out of this court as fast as we can. On the other hand, we don't want to rush or we're going to wind up right back before you asking for more time, so we think the dates that were in Mr. Steinberg's agenda letter are fine, and we're fine with those.

As to a deadline for amending -- I mean, I'm sorry, for filing additional adversary proceedings or joining in ours, it was never our intention to encourage more adversary proceedings, but we did think it was important that there be a time when the Court be able to know that. I now know the universe of what the pleadings are.

THE COURT: What people want to assert.

MR. FLAXER: Yes. So we're fine with picking a date for that, maybe a date in mid to late May would be fine. Mr. Steinberg's agenda letter suggested May 14th as a date for us to amend our complaint. We are considering

three amendments, which we don't think would have any effect on the process that's being developed here, but we're okay with that date.

Mr. Weisfelner discussed sort of the interplay between adversary proceedings and the contested matter. I think that there is agreement here that for discovery purposes and for the scheduling we're doing here today, they should be treated as consolidated and run contemporaneously, and there's no need at this point to have any distinction that's meaningful that I can think of.

I mentioned to Mr. Steinberg this morning in the hallway that, you know, because we filed a complaint, a summons has been issued, and there's a date to answer, which backs into a date for a Rule 26(f) conference. But I think those dates can be just sort of rolled into this process so we don't have to have any, you know, separate concerns about other dates that sort of automatically come with a filing of an adversary proceeding.

THE COURT: I think my understanding then might flow from what you just said, but you're also equally amenable to any procedural consolidation, including briefs to cover the field in both.

MR. FLAXER: Correct.

THE COURT: Okay.

MR. FLAXER: And I think the last point that I

have to mention since everything's been so, I must say, very efficiently covered is we're the ones who did raise the possibility of mediation. I think I agree with what both counsel have said before me. I would just urge that we don't lose sight of it and as much as we'd like to avoid extensive discovery here, and as much as I'd hope we can avoid it, but I fear it may not be avoidable, the mediation alternative may wind up being much more productive and better for the victims we're all seeking to serve than extensive litigation.

THE COURT: Okay. Thank you.

MR. FLAXER: Thank you, Your Honor.

THE COURT: Is there anybody else who hasn't had a chance to be heard for the first time who would like to be? Come on up, please.

I'm taking someone in the courtroom first, and then I'll ask about the phone.

MR. MARTORANA: Good morning, Your Honor, Keith Martorana of Gibson Dunn & Crutcher on behalf of the GUC Trust.

THE COURT: Did you say Marona?

MR. MARTORANA: Martorana.

THE COURT: Martorana.

MR. MARTORANA: Yes.

THE COURT: I'm sorry.

MR. MARTORANA: Your Honor, I stand because you had suggested at the outset of this hearing the possibility that issues related to the GUC Trust and claims against the GUC Trust might be better addressed as a threshold issue to start.

Based upon what I'm hearing today, it sounds like there's a consensus among the parties here at least, that this is something that should not be addressed as a threshold issue.

THE COURT: Well, that depends on who you're including within that consensus, Mr. Martorana.

MR. MARTORANA: I meant just these parties over here. Don't -- you would like to have it addressed to the threshold issue?

UNIDENTIFIED: I'll address it later.

MR. MARTORANA: Okay. All right. Then I guess there is no consensus on that, but I will tell you that from our perspective, we believe that it should not be addressed as a threshold issue.

We do believe that first off it will require at least some discovery, probably substantial discovery. We also believe, you know, particularly because as it relates to issues of excusable neglect, which are fact sensitive.

We also believe that it's not dispositive of -- as Mr. Weisfelner said the -- you know, the fundamental issue

here which is whether or not claims can be asserted against New GM.

Moving off it being a threshold issue, we also don't believe that this is an issue frankly that needs to be addressed at any point during this hearing -- during this proceeding.

No claimants, none of the plaintiffs, no claimants or potential claimants had raised this as a possibility. No one has filed a motion to lift the bar date. The only person that has raised it has been New GM, based upon, you know, some statements of fact in some pleadings. But the only person that has actually moved forward with it is New GM, and frankly, you know, it's our view that this is essentially a way to deflect liability away, and you know, the attention away from New GM and put it on to a third party.

To the extent that Your Honor is inclined to rule against us and have it either be dealt with as a threshold issue or as a -- I guess, a subsequent issue, we would request to participate in any of the discovery that does transpire. And then to the extent that there are any claims against New GM to be resolved, we would also ask to participate in any mediation.

THE COURT: Okay. Thank you.

MR. FLAXER: Thank you.

THE COURT: Let's see, Mr. Golden, Mr. Posner. First you, Mr. Golden, then I'll hear from you, Mr. Posner.

MR. GOLDEN: Thank you, Your Honor, Daniel Golden, Akin Gump Strauss Hauer and Feld, counsel for certain publically traded public -- publically traded unit trust holders.

Your Honor, I do take your admonition not to pile on, although my name was used in vain, so I figured I'd stand for a minute or two, we agree with the position just advocated by counsel for the GUC Trust.

We think it interesting that none of the potential plaintiffs who might have asserted late claims against a GUC Trust have indicated an intention to do so. It's only New GM that has raised that issue.

THE COURT: Well, pause please, Mr. Golden.

MR. GOLDEN: Yes.

THE COURT: You've been around the block a couple of times.

MR. GOLDEN: Too many times.

THE COURT: If you were a plaintiff's lawyer, would you rather collect a hundred cents on the dollar or 30 cents on the dollar? And if I'm allowed to ask a compound question, would you prefer to try to shoot the moon with a claim for punitive damages or would you prefer to assert that punitive damages claim in a bankruptcy where punitive

damages come at the expense of the remainder of the creditor community?

MR. GOLDEN: So I'm assuming both of those compound -- both parts of that compound question were rhetorical.

THE COURT: Yes.

MR. GOLDEN: I understand, Your Honor. I understand the strategy involved, but I think Mr. Weisfelner is correct. There is a looming threshold issue here. I'm not here to argue pro or con on that threshold issue, but that issue once resolved will determine whether there needs to be claims asserted or attempted to be asserted against the GUC Trust.

I think Mr. Weisfelner was entirely correct, we actually debated among ourselves whether to either -- whether to even file a letter seeking to participate at this hearing, because none of this hearing had anything to do with the Trust or the beneficial interest holders of the Trust.

I was, however, concerned on April 30th, that somehow some way the GUC Trust was going to be injected into those proceedings, and therefore, we sent the letter asking to participate.

Sure enough, seven hours later, New GM filed their letter. And for the first time injected that issue into

these proceedings. We don't think it's appropriate. We're frankly strangers to these proceedings. There may come a time when the plaintiffs and the claims that the plaintiffs represent, seek to assert those claims against the GUC Trust, it's not now. They haven't done so, they haven't indicated an intention to do so.

Furthermore, Your Honor --

THE COURT: Pause please, Mr. Golden. Put yourself -- I made you put yourself in the shoes of the plaintiffs' lawyers, now I want you to put yourself in my shoes.

Can you see how a judge might be uncomfortable with a scenario under which there's no claim against anybody, assuming solely for the purpose of discussion, that the claim otherwise has merit?

MR. GOLDEN: Absolutely, Your Honor. I've said to my colleagues that you must be struggling at night with these issues, whether to proceed, allow these claims to be filed against New GM. If so, then there's no need for the GUC Trust. But if not, does there -- is there another remedy available by going against the GUC Trust. I understand the discomfort of the Court, but that discomfort was caused by actions taken by other parties.

There's often times unfortunate circumstances when people are deprived of their ability. They fail to assert

their rights, they fail to a -- timely assert their rights. Unfortunate things happen in bankruptcy, Your Honor is well aware of that, and I understand the discomfort level. But it doesn't change the fact that to adjudicate whether or not these claims should be allowed against the GUC Trust will require a significant amount of discovery.

The Pioneer standards themselves that regulate or determine whether or not there is excusable neglect is ripe with discovery and evidentiary rationales.

So, Your Honor, I think I agree with Mr. Weisfelner's suggestion, hold this off, it won't be permanently held off. If Your Honor is to determine that the plaintiffs can proceed against New GM, that will probably be the end of it as it relates to the GUC Trust. If that's not the Court's ruling, we can revisit the issue if and when it becomes appropriate.

But to do it as a threshold issue, when there are already so many issues on the table, we think is a mistake.

THE COURT: Okay. Thank you.

MR. GOLDEN: Thank you, Your Honor.

THE COURT: All right. Mr. Posner, come on up, please. Now, I understand that you and your partner, Ms. Cyganowski are acting as liaison between Mr. Weisfelner, and Mr. Esserman and Mr. Inselbuch on the one hand, and the other, I guess it's, I don't know, 50 to a hundred other

class action lawyers, do you have some points that you need to make that Mr. Weisfelner didn't satisfactorily make?

MR. POSNER: No, Your Honor, just briefly, David -- for the record, David Posner from Otterbourg, and as you pointed out, and as Mr. Weisfelner mentioned I think twice, Ms. Cyganowski, my partner, has -- is working with that group as a consultant and a liaison counsel-type role.

She asked me to convey to the Court that to the extent that she can be helpful in harmonizing any discord in connection with the plaintiffs' group, she stands ready to assist in that regard. And I would be remiss, Your Honor, if I didn't say I'm working with co-counsel, Harley Tropin of the Kozyak Tropin firm who's here today in the court.

THE COURT: Okay.

MR. POSNER: Thank you, Your Honor.

THE COURT: Thank you, Mr. Posner. Mr. Etkin.

MR. ETKIN: Your Honor, Michael Etkin, Lowenstein Sandler for the plaintiffs in two pending class actions.

I rise only to talk about an issue that has been raised and was raised in Mr. Weisfelner's letter of yesterday, just so I have some clarity.

First of all, given the time frame, the number of lawsuits, the number of lawyers, I think it's extraordinary that the plaintiffs' side has been able to achieve this level of cooperation so quickly for purposes of today's

hearing. And having dealt in the class action realm for many years, it is not the usual.

Second of all, I have enormous respect for Mr. Inselbuch and his firm, Mr. Esserman, and his firm and Mr. Weisfelner and his firm, that goes without say. However, I just want to quote from the second to last bullet point of Mr. Weisfelner's letter as it related to the question of liaison counsel for plaintiffs. And that's --

THE COURT: The letter of May 1?

MR. ETKIN: His letter of May 1, yes. And that's what I thought and assumed the state of play was as we walked into the courtroom today. And it's short.

Mr. Weisfelner says, "A majority of plaintiffs has designated counsel as lead counsel for the May 2nd conference. Counsel will endeavor to further a continued coordination amongst plaintiffs. The May 2nd conference agenda should not include debate about the appropriate procedures for such coordination, and if necessary, it can be addressed at a later conference."

I agree with that. I think that there's coordination that still needs to be discussed as we move forward. These three esteemed counsel were designated to appear on behalf of a majority of the plaintiffs for purposes of today's hearing, and I just want to make sure that I understand the state of play correctly.

THE COURT: Well, I take it you're not asking me for a ruling on that.

MR. ETKIN: No. I'm not asking you for a ruling at all. It's not something that really was placed on the agenda, and it's really something for the plaintiffs' counsel and their respective bankruptcy counsel to work out, to the extent more coordination is necessary.

THE COURT: Okay. All right. Anybody else -- oh, there was a gentleman on the phone if I'm not mistaken.

MR. BECNEL: Yes, Your Honor, Daniel Becnel of Becnel Law Firm. I have since filed in the Eastern District of Louisiana --

THE COURT: Okay. Pause please. Was it Becnel?

MR. BECNEL: Becnel, B-e-c-n-e-l.

THE COURT: And did you give me a letter, Mr. Becnel? My prep didn't reflect that letter.

MR. BECNEL: No, we did not submit a letter. We've been on all of the conferences though.

THE COURT: I beg your pardon?

MR. BECNEL: We've been with all of the conference calls that all of the lawyers have had together.

THE COURT: Well, forgive me, Mr. Becnel, I asked another attorney to put himself in my shoes, and I'm going to do the same with you. But frankly I'm not looking for your understanding. I'm looking for you to understand my

ruling.

I have before me one full courtroom here, and I believe I have two overflow courtrooms. And I issued an order to obviate this exact situation, which every one of the other lawyers in this entire case was fully able to comply with, and when I issue an administrative order to avoid conduct that results in chaos in a case on my watch, I need the legal community to understand that when I issue orders, I mean them.

So respectfully, I am denying you the opportunity to be heard. If you have concerns, I'm sure that Mr. Weisfelner or his colleagues will return your phone calls. And as you've undoubtedly heard, they're fairly capable advocates.

So I think my ruling is clear. I'm denying you the opportunity to be heard for failure to comply with the requirements of my case management order.

Mr. Stein -- is there anybody else on the phone, of course, a person on the phone who has complied with the requirements of the order?

(No response)

THE COURT: Mr. Steinberg, you can reply.

MR. STEINBERG: Your Honor, I'm going to be very brief. One, to the extent there was a discussion about mediation and Ken Feinberg, I want to just make it

absolutely clear that Mr. Feinberg has not been retained to examine the economic losses which are inherent in these lawsuits. His focus has been on the accident victims.

Second, that the accident victims, while not a part of our motion to enforce, it does not mean that there -- that our position is not that they are retaining liability at this point in time for the pre-sale accident victims only.

Third, that I agree with Mr. Weisfelner and Mr. Flaxer that I think as far as melding the two procedures and making sure that the adversary proceeding, the contested matter are all dealt with efficiently, I think we'll be able to do that and work with each other to do that.

I did think Mr. Flaxer had actually a very good suggestion on the fraud and the court issue, is that once we go through the stipulated facts and the -- whether there will be discovery and if so, what narrowly tailored discovery there will be, then we will be able to evaluate whether it's still efficient to deal with fraud on the Court or not as a threshold issue.

And so our suggestion would be as Mr. Flaxer has modified it, is to let us go through the process of stipulated facts and if we do want to put on fraud on the Court as a threshold issue because we actually think we can get rid of it based on a legal theory, and whatever facts we

stipulated to, we want to reserve the right to do it. We're not asking Your Honor to rule on that now or not, but we would take that up at the next hearing if we're at that stage.

As far as the GUC Trust, the late filed claim, the reality is that the person who raised this issue was not me in my letter. The person who raised the issue was the objector, and I think it was Mr. Weisfelner who claimed a denial of procedural due process for failure to get notice of the bar order, and saying that he had no other remedy, and the only remedy that he could possibly look to is New GM.

The other person who put it on the calendar was Mr. Flaxer's client, because we've agreed that a threshold issue is three -- I'm sorry, 60(d)(1), which is that if there was some kind of a violation, is there -- should there be an equitable remedy that's fashioned against New GM for Old GM's conduct.

So he's put on the issue as to whether -- because there's no other opportunity to get any kind of recovery, that you have to look to New GM.

Now, when I said that I didn't concede that this was a threshold issue or not, it was because it was more nuanced. I'm not trying to suggest that as a threshold issue we brief the Pioneer issues. What I am suggesting is

that the plaintiffs here cannot make a legitimate procedural due process argument relating to the bar order if they want to sleep on their rights and not go against Old GM while Old GM is still sitting with securities. And I thought that that needed to be flabbed (ph).

And that if it's inherent in the 60(d)(1) issue that they're going to look to us because they otherwise have no other remedy, then I think that that is an issue that has to be dealt with. Having said that, and I don't say anything more on that issue.

I do think, Your Honor, and I wasn't sure why Mr. Weisfelner went into it, but his concerns with regard to an issue that I think Your Honor dealt with adequately, which is dealers who may have tried to put conditions on fixing an ignition switch, and Your Honor asked essentially, why are you asking me that, I think New GM clarified that. And as far as we know, it was one dealer, and it was immediately dealt with, and when they asked whether there were other dealers involved, we never got a list for anything else.

So I only say that not because it's relevant to anything here, except that there is press that is listening to this issue, and everybody likes to say in a very broad brushed way, New GM is acting irresponsibly. On this particular issue, we did act responsibly, and on all the issues I think we're trying to act responsibly.

And to the extent that Mr. Weisfelner conceded that he wasn't a class action lawyer, or a negligence lawyer, he's probably also not a scientist or an engineer who could decide whether the air bag issue is one thing or another thing.

I only say that again because the people listening here, that it should be absolutely clear that you can say whatever you want to say, but at the end of the day, it ultimately has to be grounded in fact and a probable claim.

Other than that, Your Honor, we appreciate the time you've given us today.

THE COURT: All right. Ladies and gentlemen, I want you to take a lengthy bathroom break, but hopefully no more than that. I would like people who are interested in my resulting directions to be back in 15 minutes. That would be 25 to 1 on the clock up there.

I can't guarantee you that I'll have it buttoned up all then, but I don't want to impose on you to wait any more than you need to. We're in recess.

(Recessed at 12:21 p.m.; reconvened at 1:10 p.m.)

THE COURT: Have seats, please. I apologize for keeping you all waiting. Here's what we're going to do. In most respects, it will be similar to my tentatives, but with some refinements.

One, I want to leave as much time for thoughtful

briefing and thought by the Court as possible. But at the same time, I want this to proceed as expeditiously as I can consistent with fairness. So we're going to consider as threshold issues the two remaining issues shown on Mr. Weisfelner's blackline, the discrimination argument, the possibility that the claims now being asserted may be claims against Old GM or the GUC Trust, and subject to what I say momentarily, even the fraud on the Court contentions.

Messrs. Steinberg, Weisfelner, Flaxer, Martorana, and Golden, or their designees, are to confer and to prepare an order then to be settled on three business days' notice or overnight mail, consistent with these determinations that I'm dictating now, but putting meat on the bones, and providing for agreed upon dates.

Two, you're to meet and confer to agree upon facts to the maximum extent possible, consistent with your professional duties to your clients. To the extent you need to agree to disagree, you're to identify the matters that you can't agree upon and jointly present those identified matters to me, after which I'll determine the materiality of what's not agreed on and how it should affect further proceedings, either by way of authorizing limited discovery, or by taking issues off the table for now, and determining them later.

As a general matter, we're going to get as far as

we can without discovery. And notwithstanding what my case management order otherwise provides, there will be no discovery in either the adversary proceeding or the contested matter until and unless I order otherwise.

Three, I consider it preferable to consider the fraud on the Court claims as early as possible, and at this juncture, I'm including it as an issue to bring before me as one of the threshold issues.

But I recognize or at least assume that the fraud on the Court claim is likely to require at least some discovery. You're to confer and see if you can agree on limited discovery that will meet your respective needs on this. I hope, but I'm not sure that you'll be successful.

If after good faith discussion, agreeing on limited discovery is impossible, either side will be permitted to take the fraud on the Court issues off the table as threshold matters, and to defer them for consideration until a later time, assuming that you first identified the problem to me and gotten my green light to do so.

Four, I agree with Mr. Martorana and Mr. Golden that the matters involved in compliance with Pioneer are fact intensive, and are not appropriately threshold issues. But any party will be free to assert that claims now being asserted against New GM are prepetition and not post-

petition claims.

Before any decision is made on the extent to which the GUC Trust might have to satisfy any of those claims, each of Wilmington Trust and any holders of GUC Trust units will have full opportunity to be heard on any and all issues.

Each of Wilmington Trust and any holders of GUC Trust units, though in the latter case, with the same kinds of coordination that I expect from the plaintiffs' side, will have unlimited standing to be heard on not just GUC Trust related issues, but on any of the issues that we're considering as part of this exercise; either in the adversary proceeding or the contested matter.

Likewise, in the Wilmington Trust and any holders of GUC Trust units, again subject to the coordination requirement, will be free to participate in any discovery I authorize in connection with the remainder of the issues, even though I'm not authorizing any such discovery now.

But related to that, to the extent Wilmington Trust told me in our discussion that it had a desire for discovery, its request for that is denied at this time, without prejudice to renewal at a time when it's more appropriate.

Five, I will not interfere with the MDL panel's hearing now scheduled for May 29 and will permit the

judicial panel and multi-district litigation to rule on where pretrial proceedings with respect to any of the underlying actions might proceed.

But this ruling is without prejudice to the rights of any party to ask me to stay further proceedings before the transferee judge based on rulings in this Chapter 11 case, or based on any perceived delay in my issuing rulings in this Chapter 11 case.

Six, anyone who is unwilling to agree to the temporary stand still that the majority seems to agree upon must come forward before me within a time certain, either on the date proposed in the Steinberg and Weisfelner letters, or an alternative date they might agree upon, in consultation with the other parties that I've allowed to participate in the formation of the order, with a motion asking me to rule on whether I should force such a standstill on the dissenter by TRO or preliminary injunction.

Nothing in the scheduling order will, however, change the usual burdens associated with getting a TRO or preliminary injunction relief.

Seven, parties are to identify any and all issues they want me to decide by a date certain to be proposed by that team who I've designated for that purpose, the same one that's preparing the proposed form of order, and to state

whether or not their issues to be addressed as threshold issues or not.

They are then to confer with the others as to when any such issues are best decided, whether as threshold issues or as later issues. If any such additional issues are to be presented as threshold issues, briefing on them should be rolled into the briefing, otherwise authorized. But if they're not perceived to be threshold issues, they can be deferred with a full reservation of rights.

Eight, matters in the adversary proceeding and in the contested matter will be jointly administered. For the avoidance of doubt, this will include joint briefing and joint discovery, if and when any discovery is authorized.

Parties should agree upon a preferred place for a single docket to file all of the documents in connection with this controversy, and to provide for that in the proposed order. As far as I'm concerned, either the adversary or the contested matter will be equally satisfactory.

Nine, other than as I stated, I don't think that I intended to disapprove anything that had been agreed upon between Mr. Steinberg and the class action plaintiff steering committee. But for the avoidance of doubt, if you think I left something out, or was inconsistent in my rulings, I would ask that you tell me that now.

Ten, the matter of mediation is deferred without prejudice to anyone's right to raise the issue at a later time.

So, folks, you can take the weekend off, but after that, please get together as soon as practical to get me an agreed upon form of order, at least agreed upon between the people I mentioned, then to be settled. That order should take care of details, such as proposed dates, which I've intentionally left out of the rulings I just announced. I think you can and should meet your needs and concerns on that.

Now, not by way of reargument, I suspect that there may be some details I failed to address or some loose ends, and I'll allow people to be heard on that.

Mr. Steinberg?

MR. STEINBERG: Your Honor, I think I can deal with everything you said. The only thing is, do we talk to your chambers about the next status conference date, or do you want to give us the date and we'll try to back into to the sum of the requirements before then?

THE COURT: My preference, I think, Mr. Steinberg, is that we do it as an iterative process. You guys, after you've figured out the time you need, tell me what you would recommend as far as a date within a zone. Thereupon my courtroom deputy, Ms. Calderone will see how it fits into

the schedule. She'll advise you what we're in a position to do, and then you can either massage your dates, or plug the date we give you into the order that you settle.

MR. STEINBERG: That's acceptable, thank you.

THE COURT: Okay. Anything else? Mr. Esserman, were you rising to be heard in any way?

MR. ESSERMAN: No, thank you, Your Honor.

THE COURT: Oh, okay. All right. Does anybody have anything else?

(No response)

THE COURT: No. Okay. Thank you very much. We're adjourned.

(Proceedings concluded at 1:22 PM)

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RULINGS

C E R T I F I C A T I O N

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I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: May 3, 2014

Shelia G. Orms

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